

BEFORE THE FEDERAL ELECTION COMMISSION

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RESPONSE OF COLEMAN
FOR SENATE

MUR 6077

ORIGINAL

SUMMARY

Because Complainant's charges have no basis in fact, we request that the Commission dismiss the above-captioned matter promptly. The Coleman campaign did not engage in improper "coordination" with the Chamber of Commerce ("Chamber") or the National Federation of Independent Business ("NFIB"), and Complainant has produced absolutely no evidence to the contrary.

FACTS

The Coleman campaign has retained the services of Jeff Larson and his company, FLS Connect, for several years. *See* Exhibit A (Affidavit of Jeff Larson); Exhibit B (Affidavit of Cullen Sheehan). FLS has provided advice on direct voter contact projects, general political consulting, technology services, and fundraising telemarketing. *Id.* However, Sheehan and others with the Coleman campaign, including Jeff Larson, did not become aware of the NFIB and Chamber advertisements until such advertisements were released to the public. *Id.*

LEGAL ARGUMENT

Impermissible "coordination" requires that both the "content" and the "conduct" standards be met. Here, while the advertisements in question did mention Senator Coleman and his opponent, thus meeting the content standard, the conduct standard is not met.

- The campaign did not request or suggest the communications at issue, and did not know of them until they were released to the general public. *See* 11 CFR § 109.21(d)(1); Exhibit A; Exhibit B.

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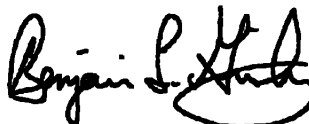
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- The campaign was in no way materially involved in any decisions regarding the content, intended audience, means or mode of the communications, specific media outlet used, the timing or frequency of the communications, or the size or prominence of the communications. See 11 CFR § 109.21(d)(2); Exhibit A; Exhibit B.
 - There were no substantial discussions about the communications between the entities that made these communications and the campaign or its agents. See 11 CFR § 109.21(d)(3); Exhibit A; Exhibit B.
 - While FLS may have been a common vendor, the Coleman campaign never worked with employees who had material involvement with the services provided by FLS to the Chamber or NFIB. See 11 CFR § 109.21(d)(4); Exhibit A; Exhibit B.

In short, no improper coordination occurred in this matter. Complainant acknowledges this fact by stating that "the television and newspaper advertisements may also meet the third prong." Complaint at 4. However, whatever allegations Complainant may make about the so-called "close-knit web" of "relations between [sic] Senator Coleman, the Chamber, NFIB, Jeff Larson, and FLS," there is no evidence of actual wrongdoing.

CONCLUSION

For the aforementioned reasons, I respectfully request that the Complaint be dismissed.

Respectfully submitted,



Benjamin L. Ginsberg

BEFORE THE FEDERAL ELECTION COMMISSION

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RESPONSE OF FLS CONNECT
AND JEFF LARSON

MUR 6077

ORIGINAL

SUMMARY

Because Complainant admits its charges are based solely on "an inference" in a newspaper article, and, as shown below, such inferences are baseless, the Commission should promptly dismiss this matter. Under no circumstances did FLS Connect ("FLS"), Jeff Larson, or any other individual associated with FLS Connect facilitate improper "coordination" between the Chamber of Commerce ("Chamber") and the Coleman for Senate campaign, or the National Federation of Independent Business ("NFIB") and the Coleman campaign. FLS has in place a strict firewall policy constructed according to Commission guidance, and its practices were previously recognized as compliant by the Commission. See General Counsel's Report #2 for MUR 5546. FLS Connect and Jeff Larson adhered fully to this policy, and Complainant has produced absolutely no evidence to the contrary.

FACTS

FLS Connect counts among its current clients both the Chamber and the Coleman campaign. It has worked with the NFIB in the past, but has not done so in the last two years, including the entire 2007-2008 election cycle. See Exhibit A (Larson Affidavit).

During the 2007-2008 election cycle, FLS has provided direct voter contact, general political consulting, technology, and fundraising telemarketing services to the Coleman campaign. *Id.* These services were managed by FLS partner Jeff Larson, who has worked with Senator Coleman for many years. *Id.* During the same period, FLS provided membership drive telemarketing services to the Chamber of Commerce, although it was not involved in any manner in the development or airing of

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the Chamber's television and radio advertisements. *Id.*; Exhibit B (Blosser Affidavit). Services to the Chamber were provided by Elizabeth Blosser, FLS Director of Issue Management. *Id.*

FLS operated under a strict written firewall policy distributed to all employees at the company. *See* Exhibit A; Exhibit B; Exhibit C (FLS Connect Firewall Policy). Blosser and Larson operated in separate "silos" created to avoid improper coordination. *See id.* The silos were categorized as follows:

- National Parties/State Parties/Federal Candidates/Victory programs
- National Party Independent Expenditures
- Issue Management and Advocacy clients and State and local groups and candidates

See Exhibit C. The policy warns that FLS personnel must not:

- Discuss the private political plans, projects, activities or needs, including messages, of any candidate committee client with an FLS partner or employee who is providing services to an issue advocacy or independent expenditure client whose communications name the same or an opposing candidate.
- Discuss the private political plans, projects, activities or needs, including messages, of any candidate committee client with an FLS partner or employee who is providing services to a party committee client doing independent expenditures (excluding the permissible coordinated expenditure work for that party) whose communications name the same or an opposing candidate.
- Discuss the private political plans, projects, activities or needs, including messages, of any party committee client with an FLS partner or employee who is providing services to an issue advocacy client whose communications name the same or the opposing party or a candidate of either party during the time windows identified above or a candidate committee (excluding permissible coordinated expenditure work).

Id.

As the attached affidavits reflect, Blosser and Larson both abided by this policy at all times. They did not discuss Coleman campaign plans, projects, activities, or needs; they did not communicate such plans, projects, activities, or needs to the Chamber; and they did not play any role in the development or airing of Chamber advertisements mentioning Senator Coleman. *See* Exhibit A; Exhibit B. Blosser did not communicate to anyone involved with the Coleman campaign,

including Larson, any information about her Chamber work. *See* Exhibit B. During the period in question, Blosser was not even working from FLS offices—she was working from her own home. *See* Exhibit B. No FLS employees who were involved in serving the Coleman campaign played any role in serving the Chamber.

LEGAL ARGUMENT

Commission regulations hold that impermissible “coordination” requires that both the “content” and the “conduct” standards be met. While FLS’s status as a common vendor of the Chamber and the Coleman campaign triggers scrutiny under the conduct standard, *see* 11 C.F.R. § 109.21(d)(4), its written firewall policy ensured that no impermissible coordination took place. *See* Exhibit C.

Commission regulations and guidance permit a commercial vendor to implement firewalls to prevent the prohibited sharing of information among common clients such as a campaign and an outside group which mentions that candidate in its communications. If firewalls prevent the sharing of the candidate’s plans, projects, activities or needs, the conduct standards of 11 CFR § 109.21(d) will not be satisfied. *See* 11 CFR § 109.21(h). Such was the case here, as it was when the Commission spoke approvingly of FLS’s firewall policy in the past, noting that “[t]hese ‘silos’ also appear to have prevented the transmittal of information by other officers or employees from Bush-Cheney ’04 and the RNC to and from [Progress for America-Voter Fund].” General Counsel’s Report #2 for MUR 5546.

Furthermore, even putting aside the question of silos, FLS’s work for the Chamber was limited to coordinating telephone calls for the Chamber’s 2008 membership drive, making approximately 12,000 calls nationwide and about 250 calls in Minnesota to prospective members. *See* Exhibit A; Exhibit B. Nothing about this activity would have provided the Chamber with any information about the Coleman campaign’s plans, projects, activities, or needs, and nothing about

the project would have facilitated any improper coordination. *See* 11 C.F.R. § 109.21.

Complainant, the opposition state political party committee, acknowledges this fact by carefully stating that "the television and newspaper advertisements *may* also meet the third prong." Complaint at 4. However, whatever allegations Complainant may make about the so-called "close-knit web" of "relations between [sic] Senator Coleman, the Chamber, NFIB, Jeff Larson, and FLS," it has produced absolutely no evidence of actual wrongdoing.

CONCLUSION

For the aforementioned reasons, we respectfully request that the Complaint be dismissed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W. J. McGinley".

William J. McGinley
Kathryn Biber Chen

FLS Connect Legal Compliance Policy Memorandum

To: FLS Connect Employees
From: The Partners
Subject: Federal Campaign Finance Law Firewall Policy

FLS Connect ("FLS") has enjoyed years of success performing a vast range of services for a wide range of clients, from Federal candidate committees to political parties to issue advocacy groups. Campaign finance laws place difficult challenges on the way we conduct our business. It is important that you read and understand this memo because our continued success depends on complying with the prohibitions, limitations and requirements of the Bipartisan Campaign Reform Act of 2002 Act and corresponding Federal Election Commission ("FEC") regulations (collectively "BCRA").

Recognizing that BCRA places limits on vendors such as FLS who have a wide range of clients engaged in political activities, FLS must keep its work for candidate and political party committees separate from its work for issue advocacy organizations or groups doing independent expenditures. BCRA provides that public communications by issue advocacy groups or political party committees may be considered in support of a candidate or party committee (and, therefore, an in-kind contribution to the candidate or party) if the communications are coordinated between the issue advocacy group and the candidate or party committee, or sometimes between the party committee and the candidate committee. See 11 C.F.R. § 109.21.

Since FLS provides services to candidate and party committees, as well as issue advocacy and independent expenditure groups, FLS partners and employees need to maintain "firewalls" to ensure that we do not inadvertently provide or transmit non-public information (1) about candidate committee clients to our issue advocacy group or party committee independent expenditure clients, (2) about party committee independent expenditure clients to our candidate committee clients, regular party committee or issue advocacy group clients.

FLS personnel must not:

- Discuss the private political plans, projects, activities or needs, including messages, of any candidate committee client with an FLS partner or employee who is providing services to an issue advocacy or independent expenditure client whose communications name the same or an opposing candidate.
- Discuss the private political plans, projects, activities or needs, including messages, of any candidate committee client with an FLS partner or employee who is providing services to a party committee client doing independent expenditures (excluding the permissible coordinated expenditure work for that party) whose communications name the same or an opposing candidate.

- Discuss the private political plans, projects, activities or needs, including messages, of any party committee client with an FLS partner or employee who is providing services to an issue advocacy client whose communications name the same or the opposing party or a candidate of either party during the time windows identified above or a candidate committee (excluding permissible coordinated expenditure work).

FLS takes these issues seriously, and no individual candidate or party committee or issue advocacy client is worth exposing the firm to potential legal liability. These rules are not intended to prevent FLS partners and employees from discussing procedures that will improve the services we provide to our clients. To comply with these regulations, FLS is structuring our organization, as we have in the past, in particular silos. For this year, the silos are:

National Parties/State Parties/Federal Candidates/Victory programs

National Parties Independent Expenditures

Issue Management and Advocacy clients and State and local groups and candidates

Keep in mind, the reasons for these silos is to avoid is the transfer of information from one group to one of the other groups. As we did in previous elections, we are attempting to go a step further and avoid even the appearance of this type of coordination.